APPENDIX A.

The Constitution.

FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in the time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

FOURTEENTH (SECTION 1) AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

APPENDIX B.

The Statute.

TENNESSEE PRIVATE ACTS OF 1939, CHAPTER 381.

"Section 7. Be It Further Enacted, That said Board of Light, Gas and Water Commissioners shall have authority to make a schedule of rates for the several services and for different classes of consumers; and shall make such rates for the service rendered as will enable them at all times to pay operating expenses, interest, sinking funds, reserves for working capital, renewals and replacements, casualties and other fixed charges; but the rates charged users or consumers outside of the City of Memphis shall not necessarily be as low as the rates within the City. The said Light, Gas and Water Commissioners shall have the right to change the schedule of rates for both light, gas and or water in the City and outside the City, from time to time, as in their judgment may be necessary or proper; provided, that before any change shall be made in rates, the Board of Light, Gas and Water Commissioners shall be required to present an application to the Board of Commissioners of the City of Memphis, setting forth the reason for said proposed changes in rates, and said changes in rates shall not become effective until they shall have been approved by said Board of Commissioners, and provided further, that the Board of Light, Gas and Water Commissioners and the Board of Commissioners of the City of Memphis, shall prescribe rates that will be sufficient to pay all bonds or other indebtedness and interest thereon, including reserves therefor, and to provide for all expenses of operation and maintenance of said plants or systems, including reserves therefor."

APPENDIX C

MINUTES OF BOARD OF LIGHT, GAS & WATER COMMISSIONERS, CITY OF MEMPHIS, NOVEMBER 27, 1959:

The Annual Survey and Report of the Electric Utility System of the Memphis Light, Gas & Water Division, made by Burns and Roe, Inc., in their capacity as Consulting Engineers employed by the Division pursuant to the requirements of the Bond Resolution adopted November 27, 1956, by the Board of Commissioners of the City of Memphis, recommends that a formal study of the Division's electric rate structure be undertaken.

In conformance with this recommendation, the President, under authority granted by the Board, employed Black and Veatch, a Consultant Engineering firm of outstanding qualifications, to make a thorough study of the Division's present electric rate structure and make recommendations to the Board of such changes as may be needed. The action of the President conforms to a suggestion made at a later date by the Honorable Edmund Orgill, Mayor of the City of Memphis, in letter addressed to the President dated September 2, 1959, that an outside rate expert be employed to make such study.

A preliminary report submitted by Black and Veatch dated November 24, 1959, shows that in order for the Division to meet all the requirements of the Bond Resolution, to pay principal and interest on interdivisional notes, to pay a tax equivalent to the City of Memphis, and to amortize debt discount and expense, it will require that the Division's electric operating revenue be increased by approximately 20% for the year 1960 and subsequent years.

The Division is faced with the necessity of immediately starting preparations for the installation of the 4th Unit at the Generating Station, the need for said 4th Unit being stressed by the Consulting Engineers, Burns and Roe, Inc., in their Annual Survey and Report. As the time required to place a 4th Unit in operation is at least three years, it is necessary to proceed immediately in order that the unit may be placed in operation at least by May, 1963.

The preliminary report of Black and Veatch is based on certain estimated electric operating revenues and estimated electric operating expenses as determined by them. The Division's forces independently made a similar study. The results of the study by Black and Veatch and the Division's forces are approximately the same.

The following resolution was offered by President Morton, seconded by Commissioner Lewis, and on being put to a vote was unanimously adopted:

Whereas, As outlined in the foregoing preamble, the Division is required to increase its electric operating revenue by approximately 20%, and;

Whereas, It is the duty of the Board of Light, Gas & Water Commissioners to recommend to the Board of Commissioners of the City of Memphis that said Board of Commissioners of the City of Memphis authorize the Division to prepare new rate schedules which will increase the Division's electric operating revenue by approximately 20%.

Now, Therefore, Be It Resolved by the Board of Light, Gas & Water Commissioners, acting for the Memphis Light, Gas & Water Division:

Section 1. The Board of Light, Gas & Water Commissioners, from information submitted to it, is of the unanimous opinion that the electric operating revenue of the Memphis Light, Gas & Water Division must be increased by approximately 20%.

Section 2. The Board of Commissioners of the City of Memphis is hereby requested to authorize the Memphis Light, Gas & Water Division to prepare new rate schedules to effect an increase in the Division's electric operating revenue by approximately 20%; with the understanding that after said new rate schedules are formulated, they will be presented to the Board of Commissioners of the City of Memphis for their formal approval.

Section 3. That the President and the Secretary are hereby authorized and requested to send a certified copy of this resolution to the Board of Commissioners of the City of Memphis for its consideration.

APPENDIX D.

MINUTES OF CITY COMMISSION OF THE CITY OF MEMPHIS, DECEMBER 1, 1959:

Be it resolved by the Mayor and Board of Commissioners of the City of Memphis that the resolution adopted by the Memphis Light, Gas and Water Division at its meeting held November 27, 1959, declaring the necessity for revising the electric rate schedules to increase the electric operating revenue of the Division by approximately twenty per cent, be and it is hereby approved.

Be it further resolved that the Board of Light, Gas and Water Commissioners be authorized to prepare new rate schedule to effect an increase in the Division's electric operating revenue by approximately twenty per cent and present said schedules with their recommendations to this Commission at an early date.

APPENDIX E.

MINUTES OF BOARD OF LIGHT, GAS & WATER COMMISSIONERS, CITY OF MEMPHIS, DECEMBER 17, 1959:

The following resolution was offered by President Morton, seconded by Commissioner Lewis, and on being put to a vote was unanimously carried:

Whereas, The Board of Light, Gas & Water Commissioners, from preliminary information in its possession at the time, adopted a resolution at meeting held November 27, 1959, requesting the Board of Commissioners of the City of Memphis to authorize the Memphis Light, Gas & Water Division to prepare new rate schedules to effect an increase in the Division's electric operating revenue by approximately 20%, the preliminary information indicating that said increase of 20% was needed; and,

Whereas, The Board of Commissioners of the City of Memphis, in resolution adopted December 1, 1959, authorized the Board of Light, Gas & Water Commissioners to prepare new rate schedules and present said schedules with the Division's recommendations to the Board of Commissioners of the City of Memphis for its consideration at an early date; and,

Whereas, The results of the completed study of the Division's Rate Consultants, Black and Veatch (now in process of being printed), indicate to the Board that an increase in the Division's electric operating revenues of approximately 18.5% will be sufficient to meet all the requirements of the Bond Resolution and keep the Division in sound financial condition.

Now, Therefore, Be It Resolved by the Board of Light, Gas & Water Commissioners, subject to the approval of the Board of Commissioners of the City of Memphis, that:

Section 1. All-electric rate schedules now in effect be and the same are hereby rescinded, and effective with all-meter readings on and after December 29, 1959, the following rate schedules, identified as E-1 through E-12, copies of which are attached hereto, are hereby approved and adopted.

Section 2. The President is hereby authorized and requested to have prepared and submit, at the earliest opportunity, to the Board of Commissioners of the City of Memphis for its consideration, Application for Approval of Changes in Electric Rates and respectfully requesting that the Board of Commissioners of the City of Memphis adopt a resolution approving and prescribing the schedules of rates and charges attached hereto and authorizing said schedules of rates to become effective with respect to all meter readings on and after December 29, 1959.

Section 3. The President be and he is hereby authorized and requested to send copy of this resolution, certified by the Secretary, together with Application for Approval of Changes in Electric Rates, to the Board of Commissioners of the City of Memphis for its consideration.

APPENDIX F.

MINUTES OF CITY COMMISSION OF THE CITY OF MEMPHIS, DECEMBER 29, 1959:

Whereas, the Board of Light, Gas & Water Commissioners, acting for the Memphis Light, Gas & Water Division, by resolution adopted December 17, 1959 rescinded all electric rates in effect as of December 29, 1959, and approved and adopted, subject to the approval of the Board of Commissioners of the City of Memphis, new electric rates identified as E-1 through E-12; and

Whereas, acting under authority of said Resolution of December 17, 1959, the president of the Memphis Light, Gas & Water Division had prepared and submitted to the Board of Commissioners of the City of Memphis on December 21, 1959 for its consideration an Application for Approval of Changes in Electric Rates; and

Whereas, said Application for Approval of Changes in Electric Rates included as exhibits thereto, among other exhibits, the schedules of electric rates identified as E-1 through E-12, the Resolution of the Board of Light, Gas & Water Commissioners adopted December 17, 1959, and the final report of Black and Veatch, nationally known experts in the field of utility rates, of its independent study and investigation of the Division's rate structures; and

Whereas, the Board of Commissioners of the City of Memphis, by public notice published in the daily newspapers on December 11, 1959, provided for and held a public hearing on December 22nd, 23rd and 29th, 1959, for the purpose of considering reasons, testimony, statements, studies and exhibits introduced both for and against such proposed increase in electric rates; and

Whereas, from the reasons, testimony, statements, studies and exhibits presented in said public hearing, the Board of Commissioners of the City of Memphis has found and determined that the increases proposed by the Memphis Light, Gas & Water Division are necessary in order that said Division and the City of Memphis perform their obligations under Chapter 381 of the Private Acts of 1939 and the Bond Resolution adopted by the Board of Commissioners of the City of Memphis on November 27, 1956, and to maintain the Division's sound financial condition;

Now, Therefore, Be It Resolved by the Board of Commissioners of the City of Memphis, Tennessee, that it does hereby approve the Application for Approval of Changes in Electric Rates submitted by the Memphis Light, Gas & Water Division, and does hereby approve, adopt and prescribe electric schedules E-1 through E-12, identified as Exhibit "A" to said Application for Approval of Changes in Electric Rates, thereby approving the action of the Board of Light, Gas & Water Commissioners as shown in Section 1 of resolution adopted by the Board of Light, Gas & Water Commissioners on December 17, 1959.

Be It Further Resolved that effective with all meter readings on and after December 29, 1959 and pursuant to said Section 1 of resolution adopted by the Board of Light, Gas & Water Commissioners on December 17, 1959, all electric rate schedules in effect prior to December 29, 1959 are rescinded and the electric rate schedules identified as E-1 through E-12, hereby adopted and prescribed, shall become effective.

APPENDIX G.

Memphis AFL-CIO Labor Council et al.,	In the Chancery Court, Part One
vs.	at Memphis, Tennessee
City of Memphis et al.	No. 62170-I R. D.

Fiat.

To the Clerk and Master of the Chancery Court of Shelby County, Tennessee:

Issue the Writ of Certiorari as prayed for in the foregoing petition, and further issue an injunction as prayed for in the foregoing petition, requiring the respondent Memphis Light, Gas and Water Division to indicate on all of it's bills by a separate item all amounts billed under the increased electric rate dated effective December 29, 1959, and that any amount so collected be separated and set aside pending the further Orders of this Court.

Robert A. Hoffman,
Chancellor.

December 30, 1959.

APPENDIX H.

Memphis AFL-CIO Labor Council et al. vs Board of Commissioners of the City of Memphis et al.	In the Chancery Court, Part One, at Memphis, Tennessee No. 62170-I R. D.

Order Partially Suspending Injunction Denying Motion to Dissolve, and Denying Motion to Increase Bond.

This cause coming on to be heard upon the written motion of the respondents to dissolve the injunction for want of equity on the face of the bill and the motion of respondents on the motion docket to increase the amount of the injunction bonds, said motions being considered by the Court to be in the alternative, and both of said motions being set by consent for special hearing and being heard together, and after hearing the testimony of witnesses, affidavits submitted, brief, and arguments of counsel,

It Is Hereby Ordered Adjudged and Decreed that there is hereby suspended that part of the injunction that requires the respondent Memphis Light, Gas & Water Division to itemize the proposed increase on each individual consumer's bill, but that portion of the injunction remains in full force which requires the respondent Memphis Light, Gas & Water Division to keep separate and apart in a special fund, or funds, all monies collected as a result of the electric rate increase dated effective December 29, 1959, and the motions of respondents are in all other respects denied and dismissed, to all of which actions all of the respondents except.

Robert A. Hoffman,
Chancellor.

Entered January 8, 1960.

APPENDIX I.

Court of Appeals of Tennessee,
Western Section,
at Jackson Tennessee.

City of Memphis et al.,
vs.
Memphis A. F. L.-C. I. O. et al.
} Shelby Equity.

Order Granting Certiorari and Decree Dismissing Bill.

Filed February 26, 1960.

Lucile Myers, Clerk.

This cause was this day heard upon the petition of the City of Memphis, a municipal corporation, Memphis Light, Gas & Water Division, and the City Commissioners of the City of Memphis, by which petition they pray:

"1. That a writ of certiorari issue directed to the Chancery Court of Shelby County, Division I, directing said Court and the Clerk thereof to certify and transmit to this Court the entire record and proceedings in this cause.

2. That, in aid of the **certiorari**, a writ of **supersedeas** issue from this Court suspending the injunction issued by said Chancery Court and staying all further proceedings in said Chancery Court until further order of this Court.

3. That the order of the Chancery Court granting the writ of certiorari and injunction be declared illegal and in excess of the Court's jurisdiction and that same be vacated and dissolved and this proceeding dismissed at costs of defendants to this Petition.

4. That petitioners, and each of them, have such other and further relief as they may be entitled to in the premises."

and at which hearing they further moved the Court that the original bill of the complainants, who are respondents in this petition for certiorari, be dismissed for want of equity on the face of the bill.

Extensive briefs were filed by the respective parties, and the entire record, as filed in the Chancery Court of Shelby County, duly certified, was filed as provided by law in certiorari cases.

Extensive oral argument was had upon the petition, the response thereto, and the record as it appeared on file in this Court.

The allegations of the original bill filed with the Chancery Court of Shelby County, Tennessee, upon which the original complainants insist that they had a right to maintain this suit and that the writ of certiorari should not issue, and the motion to dismiss the original bill should not be considered, are set forth in paragraph 14 of the original bill as follows:

> "14. Petitioners would further show that said rates are unjust, unfair, unequal and discriminatory in that they are unequal and discriminate against petitioners as a class, as well as other residential consumers, applying without reason and arbitrarily a higher percentage increase to petitioners as residential consumers than the percentage increase applied to other classes of consumers; and further discriminate illegally, arbitrarily and unreasonably among residential consumers or among consumers of the same class, by providing that some residential consumers will actually receive a decrease, while other consumers will receive an increase in varying amounts, some as high as 3[illegible]

and that said rates, because of their inequality, are discriminatory on their face. In no case is the same percentage increase equally applied to all consumers in any class, nor is the same percentage increase applicable between classes, and all of said arbitrary and unequal increases constitute discrimination and confiscation of petitioners' property without due process of law."

With the record there was filed a schedule of charges for electric service, as fixed by the Memphis Light, Gas & Water Division of the City of Memphis and approved by the City Commissioners of the City of Memphis, which are under attack in the original bill filed in said Chancery Court.

A review of the entire record, as we are able to understand it, presents to this Court a case in which a writ of certiorari should be issued by this Court.

It further appears to this Court that the motion to dismiss the entire original bill, dissolve the injunction issued by the Chancellor, and set aside, by such dismissal, all orders and decrees made in this cause, has been carefully considered by this Court.

In the original bill and Section 5 of the prayer thereof, is set forth what the original complainants seek to have the said Chancery Court of Shelby County finally decree, and which Section of said bill is as follows:

"5. That this Court at the hearing review the proceedings of the respondent Board of City Commissioners and hear such other evidence as either party may desire to introduce in accordance with Tennessee Code Section 27-911 and declare that the electric rates in effect prior to December 29, 1959, shall continue in effect and order the respondent Board of City Commissioners to reverse and set aside its approval of the

increased electric rates in the schedules proposed to become effective December 29, 1959, and to order that the increased electric rates proposed by the respondent Memphis Light, Gas and Water Commissioners be suspended permanently."

It appears to this Court that such relief sought by the original complainants of the Chancery Court of Shelby County, could mean, if granted, nothing more nor less than a bestowal upon the Court the authority to fix the rates for electric power service in the City of Memphis, which authority it does not have.

It further appears to this Court that the allegations in the original bill to the effect that the "said rates are unjust, unfair, unequal and discriminatory", are but conclusions of the pleaders which are in no way substantiated by any allegations of the original bill, or by the record filed in this cause in this Court, and that there is no equity on the face of the bill, nor shown by the entire record which could bestow upon the Chancery Court of Shelby County the authority and jurisdiction sought.

It Is, Therefore, Ordered, Adjudged And Decreed by this Court:

(1) That petition for writ of certiorari be sustained, said writ granted, and the action of the Chancery Court of Shelby County, as set forth in the petition, be reviewed

(2) That no equity appearing on the face of the original bill, and more particularly that there is nothing in the entire record which would warrant this Court to conclude that the original defendants, City of Memphis, Memphis Light, Gas & Water Division, the Board of Commissioners of the Light, Gas & Water Division, and the Commissioners of the City of Memphis, have acted unjustly, unfairly, illegally, or discriminatorily in the fixing of the rates and charges for electric service, and it appearing that on the record in this cause the Chancery Court is without jurisdiction to grant the relief prayed, the motion to dismiss the original proceedings is sustained, the original bill dismissed, the injunction issued herein dissolved, the orders and decrees of the Chancery Court set aside, and that the original complainants and the sureties on their bonds taxed with the costs of this cause.

It Is All So Ordered, Adjudged and Decreed, this 26th day of February, 1960.

J. B. Avery, Sr., C. S. Carney, and L. D. Bejach, Judges of the Western Section of the Court of Appeals of Tennessee.

APPENDIX J.

Supreme Court of Tennessee.

Memphis AFL-CIO Labor Council et al.,
vs.
City of Memphis et al. } Shelby Equity.

Decree.

Entered June 6, 1960.

(No written opinion.)

This cause came on to be heard upon a petition for certiorari, and after full consideration by the Court, the Court is of opinion that there is no merit in said petition and the same is accordingly denied at the cost of petitioner, for which let execution issue.